

1 MR. COLE: Your Honor, may I be heard?

2 JUDGE SIPPEL: Yes, sir.

3 MR. COLE: Thank you.

4 With respect to Mr. Hutton's recap of how the
5 schedule came about, it warrants mention that the change in
6 schedule was effectuated as an accommodating to Reading. At
7 the prehearing conferences in March, March 28 and March 31,
8 as I recall, it was represented that while Mr. Hutton would
9 be distracted, obviously, by the arrival of his child, Mr.
10 Southard would be the one who would be handling the Phase
11 III discovery and that therefore there would be -- there was
12 no anticipation of a disruption.

13 Secondly, with respect to Your Honor's
14 contemplation of some leeway as far as discovery dates were
15 concerned, completion of discovery, I have a copy of your
16 Order OOM-28 released on April 5, which refers -- the
17 itemized list says, "May 5 discovery closes (all documents
18 produced and all depositions taken)," with a footnote.

19 The footnote reads, "Some allowance will be made
20 to clean up deposition discovery which cannot be completed
21 for good reason. Counsel should agree to reasonable but
22 brief postponements to accommodate witnesses on dates that
23 will not impede the hearing."

24 The strong suggestion, as I read that, is that
25 there is some notion of good cause that underlies a request

1 for extension beyond May 5.

2 Now, as far as the four corners defense, as Mr.
3 Hutton characterizes it, what I have tried to repeatedly
4 indicate this morning is that we have made, that is, Adams
5 has made a good faith effort to respond to the discovery
6 requests. To the extent the discovery requests were, in our
7 view, less than clear, we have tried to characterize them in
8 a way in which we understood with the thrust of what they
9 were seeking, and we've tried to answer that. We have done
10 that in a timely manner.

11 In fact, as I had said back in March, Mr. Gilbert
12 was then out of town. He arrived back in his office on
13 April 10, and we had our answers on the other side's desk by
14 April 19th, which is only nine days later, which is
15 significantly less than what is provided for in the rules.
16 It was three days after your initially indicated or
17 specified deadline, but that was -- you know, we were
18 operating as quickly as we could, and we go them to them
19 with notice to counsel that we would be three business days
20 late. We got them to them on April 19th.

21 We have tried and I take great offense at the
22 notion that we are trying to stonewall in any way the
23 discovery of this issue. We have nothing to hide and we
24 have tried to respond to the issue as best we can.

25 As I understand it and I reference this in my

1 opposition to the motion to stay, at least three of those,
2 that is, the custodian records, the records custodians for
3 Conestoga, the site owner for the bank in Chicago, and for
4 Telemundo, are not real deposition notices but are document
5 requests. They are efforts to secure nonparty document
6 production. That is, Mr. Hutton and Mr. Southard may
7 correct me if I'm wrong on that, but that was certainly my
8 interpretation of any deposition notice or subpoena directed
9 to a custodian of records. You're just asking that
10 custodian to produce records.

11 Those could have been undertaken on April 3rd as
12 well; that is, nothing in those document requests relied,
13 was dependent in any way on anything Adams is going to
14 produce, and in fact, in -- at least in my experience, it
15 would be a standard approach to seek documents from whatever
16 source they might be obtained if for no other reason than to
17 cross check; that is, one source may have the documents, one
18 source may not have the documents, but you go to all sources
19 where the documents may exist.

20 For example, we did that with respect to the
21 candor issue about Mr. Parker because we not only sought
22 documents from Reading Broadcasting itself, but we sought
23 documents from prior law firms who had been involved in the
24 preparation of the applications in question. We did that
25 independently. We didn't wait for documents from Reading

1 Broadcasting because we knew who they were and we could go
2 after them, and we did.

3 And I would have expected Reading to do precisely
4 the same thing if it thought that Conestoga or the bank or
5 Telemundo had documents in their files because we have no
6 control over any of those three parties, any of the three
7 entities. And I would have expected them to go after them
8 at the same time they asked us for documents. That would be
9 April 3rd.

10 They didn't do that. And in fact, apparently they
11 didn't do it until May 5. That, to my way of thinking, is
12 not good cause for extending deadlines in any way, shape or
13 form.

14 Fourth, while Mr. Hutton asserts that it would not
15 be any great imposition on Adams or presumably the Bureau,
16 but I can only speak for Adams, if we were allowed to go
17 through the deposition process for the next three or four
18 weeks, and Mr. Hutton, as I heard him say, that he expects
19 he could wrap up all depositions by the end of the month,
20 I'm not sure how that could necessarily be because there is
21 an opposition period which the third parties could oppose
22 even if Adams weren't opposing. Mr. Hutton would then have
23 an opportunity, I believe, to reply to those, but I'm not
24 sure about that, and then Your Honor would have to rule, and
25 then we would have to go off and schedule the depositions.

1 The likelihood of that all happening in the next
2 three weeks, I think, is fairly slim. But you know, I don't
3 discount it, but I think it is very slim.

4 In any event, during that period of time, during
5 the next month, we are required under the current schedule
6 to complete preparation of Phase I rebuttal, Phase II direct
7 cases because Adams has the burden of proceeding on that,
8 and we also have to prepare for whatever is going to happen
9 in Phase III. While we don't have the ultimate -- the
10 burden of proceeding, we ultimately have the burden of proof
11 or we anticipate we will have the burden of proof at some
12 point in the process.

13 That being the case, we have a lot of work to do
14 and, frankly, my May and early June have been scheduled in
15 with the notion that we would complete discovery May 5 and
16 then I would go forward working with the other procedural
17 dates.

18 So it would be an imposition at least to me
19 personally, and I believe to Adams as well, to be distracted
20 by ongoing depositions at various places to accommodate what
21 I view to be a late effort on the part of Reading to
22 commence its discovery efforts.

23 JUDGE SIPPEL: What do you think, Mr. Shook?
24 Well, said, huh?

25 MR. SHOOK: You had set the date of May 5. You

1 certainly anticipated that interrogatory answers, documents
2 and depositions would be completed by that date. In a
3 perfect world, it would be wonderful to have the deposition
4 testimony of the various individuals.

5 The question at this point, I'm afraid though, is
6 is there any particular reason to allow any of the -- what
7 is it eight at this point --

8 JUDGE SIPPEL: Eight.

9 MR. SHOOK: -- deposition notices to -- for the
10 depositions to go forward. It may well be at this point
11 that, from the standpoint of Reading's case, Reading is
12 going to have to live with and the Bureau is going to have
13 to live with the answers to the interrogatories and the
14 documents. And then to the extent that those witnesses are
15 called as hearing witnesses, we would have the benefit of
16 their testimony. If we have to, we are just going to have
17 to live without the depositions; that's all.

18 JUDGE SIPPEL: Well, there has to be some
19 semblance of order to these proceedings, and I must say I
20 had a keen interest in that.

21 What about -- I'm asking this now of Mr. Cole --
22 well, I'm asking this of all counsel. There are two
23 depositions -- I'm sorry, two subpoenas, I guess maybe there
24 is three subpoenas, I don't have my list of the subpoenas --
25 yes, I do, let me take that back. Those with respect to

1 just the custodians, there is Telemundo and there is
2 Conestoga.

3 Now, that would not -- compliance with that
4 subpoena would not -- would not require much effort on the
5 part of Adams' counsel; that's for sure.

6 MR. COLE: That's correct.

7 JUDGE SIPPEL: Just to collect the documents.

8 MR. COLE: That's correct.

9 JUDGE SIPPEL: So we could let those document
10 requests go forward, I mean, the document subpoenas go
11 forward. And the testimony -- let me tell you where I am
12 coming out on this.

13 After all that I have heard here, and I'm going to
14 certainly give Mr. Hutton an opportunity, I am only going to
15 give you two days though to respond to Mr. Cole's motion
16 that came in Friday evening, but here is where I am coming
17 out on this having heard all this.

18 I think that it is -- I think that my date of May
19 5 is clear enough, and I really do think -- I think that you
20 are really pushing me, Mr. Hutton, when you try and
21 interpret my footnote in the fashion that I think that you
22 were going with it. I was really -- I was really just
23 bending over backwards to say if there is any -- you know,
24 that if you haven't been able to clear the crumbs off the
25 table, I'll give you a chance to do that within reason. I

1 was not certainly contemplating anything like this.

2 I'm going to permit the subpoenas to be -- I'm
3 going to be permit you to try and get the documents from
4 Telemundo and Conestoga. And with the exception of Ms.
5 Swanson, I'm not going to permit any of the depositions to
6 go forward based on what I have heard today subject, of
7 course -- I'd like to read what you have to say with respect
8 to that motion before I sign an order on this.

9 And let me say this with respect to the -- with
10 respect to the principals of Adams. I mean, you have really
11 had a chance to depose them. We have heard a lot of
12 testimony from Mr. Gilbert and you're going to have
13 documents that you can cross-examine him with at the
14 hearing.

15 I am convinced that we can make a full and fair
16 record based on the answers to the interrogatories, the
17 documents and your opportunity to cross-examine, recognizing
18 that I'm very much aware of adverse inferences that can be
19 drawn.

20 You know, in the most desirable setting, you know,
21 we could go on, we could have discovery for another six
22 months, but that's just not -- people are going to forget
23 what happened back in January, and we have to have proposed
24 findings on the whole case. I mean, I think I have been
25 generous in terms of granting the time to people to get the

1 job done.

2 Now, I want you to come, and I want you to let me
3 know what we can do with respect to the testimony of Ms.
4 Swanson because I think that's -- to me, that that's -- I
5 don't know if it falls into that category that you had to
6 wait until you got documents to be able to set her up for a
7 deposition. I don't know.

8 What category would you put her in, Mr. Shook, in
9 terms of -- in terms of a witness that was readily known at
10 an earlier time?

11 MR. SHOOK: I'm not entirely certainly, but I do
12 seem to remember that her name did come up earlier.
13 Obviously, I'm not as familiar with the details as Mr.
14 Hutton or Mr. Cole would be because --

15 JUDGE SIPPEL: Her name came up early.

16 MR. SHOOK: I believe at the time the discussion
17 occurred, they were aware of it. So to that extent it would
18 seem to me that her involvement or her preliminary role or
19 whatever role it was that she played, there was some
20 knowledge of that. And to the extent that there was any
21 desire to depose her to discover what role she might have
22 had in addition to what was known, it's something that could
23 have been taken care of beginning with late March or early
24 April when the dates were set.

25 JUDGE SIPPEL: Well, how important is her

1 testimony -- well, because you don't really know because
2 nobody has taken her deposition?

3 MR. SHOOK: Your Honor, I would be guessing. I
4 haven't a clue.

5 JUDGE SIPPEL: You haven't a clue.

6 MR. SHOOK: I mean, to that extent, there is
7 nothing that precludes -- I believe there is nothing that
8 precludes oral informal conversations with her to see
9 whether she will say anything, to give one an idea of what
10 she might testify to. And likewise, there is nothing that
11 prevents her from being called as a witness --

12 JUDGE SIPPEL: That's correct.

13 MR. SHOOK: -- at the hearing.

14 JUDGE SIPPEL: That's correct.

15 MR. SHOOK: So to that extent, it's not --

16 JUDGE SIPPEL: I agree.

17 MR. SHOOK: -- as if her testimony is going to be
18 lost. It's just that we wouldn't have the option of perhaps
19 submitting a deposition in lieu of having Ms. Swanson as a
20 witness.

21 JUDGE SIPPEL: Based on what you know, you
22 certainly would have no objection to my signing a subpoena
23 ad testificandum for her to come and testify at the hearing?

24 MR. SHOOK: Absolutely not.

25 MR. COLE: Then, Your Honor, she was identified on

1 the record at least during the January session at transcript
2 page No. 1098.

3 JUDGE SIPPEL: I have a recollection -- I don't
4 know what page, but I have a recollection of the subject
5 coming up in January.

6 MR. SHOOK: That must have been a day when my
7 pneumonia was really --

8 JUDGE SIPPEL: You missed that big day, and
9 everybody was here but you.

10 MR. SHOOK: That could have been the case or I
11 could have been here but not here.

12 MR. COLE: Regardless of what the reflects.

13 JUDGE SIPPEL: Well, I'm going to -- you know, I'm
14 going to just hold out on this for the time being on this
15 one, on the determination of Ms. Swanson.

16 But I am going to permit the subpoenas to be
17 served, and I guess it goes along with a deposition notice,
18 on the documents for Telemundo and for Conestoga. I'm going
19 to cancel the depositions of Sherwood, Cave, and on the
20 three principals, Elinor Woren, Wayne Fickinger and Howard
21 Gilbert.

22 When you get a status report on Friday from Mr.
23 Cole as to what's been done on terms of getting this
24 additional discovery in, his clarifying discovery, which I
25 appreciate very much because, you know, I think you have

1 acted very responsibly in terms of responding to what these
2 needs are, and everything else will stay on target.

3 Now, I am going to take a look at -- you've got a
4 motion pending, and there is actually this motion on the
5 stay, but I'm going to consider -- I think you can pretty
6 much assume that I'm denying the motion to stay on the basis
7 that it was just -- it was not filed timely, and I don't
8 find that there has been really a basis laid for which the
9 relief -- I don't think that it's fair to the other parties
10 to disrupt their preparation time for the purposes that you
11 have outlined.

12 Mr. Hutton?

13 MR. HUTTON: Yes, Your Honor.

14 There is one individual, the person who was
15 responsible for the taping effort who wasn't identified in
16 any shape or form until their answers to interrogatories
17 came in.

18 JUDGE SIPPEL: Oh. Mr. Sherwood?

19 MR. HUTTON: Yes.

20 JUDGE SIPPEL: You've got a good point there.

21 What about Mr. Sherwood? Somebody should talk to
22 Mr. Sherwood on the record. Of course, Mr. Gilbert -- well,
23 the problem is Mr. Gilbert wasn't quite sure of anything
24 that was really being done. I mean, at least that was my
25 recollection. Now, I mean, I haven't -- this is not hearing

1 testimony with respect to the ultimate issue, but --

2 MR. COLE: Your Honor, and I believe we in our
3 opposition to the motion to stay we recognized Mr. Sherwood
4 in a different category from the others. That is, Mr.
5 Sherwood had not been identified to Reading Broadcasting
6 prior to April 19, that much is a fact and we'll concede
7 that.

8 The fact remains that no notice to take Mr.
9 Sherwood's deposition was filed until May 5. You know, from
10 that point of view, again, if they knew they wanted to
11 depose him and they were just waiting for a name and
12 address, the deposition notice could have been prepared long
13 in advance as soon as they got our interrogatory answers,
14 which clearly identified him, gave an address, gave a phone
15 number, that could have been pumped into and on file by
16 April 20th. It wasn't done.

17 MR. HUTTON: If I hadn't been in the hospital room
18 the whole time.

19 MR. COLE: Again Mr. Hutton -- excuse me, Your
20 Honor. I believe the record will reflect that Mr. Hutton
21 clearly stated in March that discovery with respect to Phase
22 III would be undertaken by Mr. Southard and that therefore
23 there would be no disruption of the trial schedule.

24 JUDGE SIPPEL: Well, I hear everything that you
25 say. Well, what is your feelings with respect to Paul

1 Sherwood, Mr. Shook, before I --

2 MR. SHOOK: Well, he falls into that category that
3 I had mentioned of someone who wasn't known until
4 interrogatory answers were provided.

5 Now, what we are talking about here is the
6 difference between April 20 and May 5. And even if the
7 deposition notice had gone out on April 20, we were still
8 going to go past the May 5 date in all likelihood with
9 respect to this person.

10 So it seems to me that Mr. Sherwood is in a
11 category all by himself.

12 JUDGE SIPPEL: Well, you work out -- I'm going to
13 require, Mr. Southard, you're going to handle this, work out
14 with Mr. Cole and Mr. Shook some reasonable way of taking
15 this man's testimony without disrupting things, even if it
16 comes down to taking his testimony by phone -- I mean his
17 deposition by phone. But that's the only exception I'm
18 prepared to make.

19 As I said, I am still undecided with respect to
20 Ms. Swanson, but I would urge that you contact Ms. Swanson
21 informally and, you know, see what she's -- first of all,
22 see what her schedule is; and secondly, what is she willing
23 to do, I mean in terms of cooperating without getting into
24 compulsory process.

25 By close of business on Wednesday, Reading will

1 file its opposition papers to the motion of Mr. Cole. How
2 do you style that motion?

3 MR. COLE: Motion in opposition.

4 JUDGE SIPPEL: Motion opposing the taking of
5 depositions. Yes, it's pretty much -- well, it's pretty
6 much moot. I mean, it is pretty much moot. Why don't we
7 just say that I'm going to grant your motion.

8 MR. COLE: Fine with me, Your Honor.

9 JUDGE SIPPEL: And with the exception of how --
10 with the exception of Mr. Sherwood, and if you can let me
11 know by -- forget about that Wednesday date, but at the same
12 time that Mr. Cole is going to be coming in with a status
13 report on discovery, if you could let me know, Mr. Southard,
14 what your efforts have been with respect to Ms. Swanson in
15 terms of having her cooperate in discovery.

16 And again, it might be by, you know, you all
17 meeting with her. It could be by telephone deposition,
18 anything that can meet in with her schedule that's not going
19 to disrupt the hearing preparation unreasonably. And if we
20 can't -- if you can't get that cleared up by Friday, then I
21 will be inclined to drop her also.

22 MR. SOUTHARD: Same for Mr. Sherwood?

23 JUDGE SIPPEL: Mr. Sherwood, I don't think there
24 is going to -- I mean, I can't -- I'm going to have to be a
25 little bit more flexible on Mr. Sherwood. I don't know

1 where -- you know, I don't know how you're going to -- you
2 know, does anybody know where he is now or what his --

3 MR. COLE: Well, yes, everybody has his address.
4 It's, I believe, Phoenixville?

5 MR. SOUTHARD: Phoenixville.

6 MR. COLE: Phoenixville, Pennsylvania.

7 MR. SOUTHARD: It's outside Philadelphia.

8 JUDGE SIPPEL: Yes, I'm going to be a little bit
9 more flexible on him, but you've got to track him down, and
10 as I say, if you are just going to take his deposition over
11 the telephone for an hour, I don't think that's going to be
12 any big deal as to whether you do it this week, next week or
13 the following week.

14 But I want Ms. Swanson, I mean, Ms. Swanson has
15 got a -- she's got a professional career to deal with and,
16 you know, she's either going to have to -- she's going to
17 have to be accommodated in a very punctilious fashion.
18 That's got nothing to do with four corners, but I'm not sure
19 what a four corners is anyway.

20 (Laughter.)

21 MR. SOUTHARD: It's a reference to Dean Smith's
22 college offense which went by way of the dodo when the shot
23 clock was instituted. You're talking about college
24 basketball fans of 25 - 30 years ago.

25 JUDGE SIPPEL: Well, on the year requirement, I

1 would meet the year requirement. But I was more interested
2 in New England basketball then I was with what was going on
3 down there.

4 Okay, I will wait to hear then -- let me see, the
5 motion -- I think pretty much you can -- I will write
6 something on this very briefly, but the motion to stay is
7 also for all practical purposes being denied except with
8 respect to what I would consider these clean-up items and
9 certainly with respect to the -- to the testimony of --
10 well, what's his name again? Mister?

11 MR. COLE: Sherwood.

12 JUDGE SIPPEL: Sherwood's testimony with Ms.
13 Swanson remaining open, and I will wait to hear on Friday a
14 status report. If you could get it over to me some time
15 around noon or earlier, that would be a help.

16 MR. COLE: No problem.

17 JUDGE SIPPEL: And other than that we then are in
18 recess. I may set -- I probably will set a short, a
19 conference for a short status call some time at the end of
20 this month. And if you all have anything, of course, you
21 know how to reach me.

22 Mr. Hutton?

23 MR. HUTTON: I do have one additional matter to
24 raise. It's unrelated to our discovery dispute. And it
25 relates to the tapes which have now been produced to us and

1 Mr. Cole has confirmed that they have sent us all of the
2 tapes that were made.

3 Our preliminary review of the tapes suggest that
4 they follow a similar format day in/day out. And for
5 purposes of presenting evidence relating to those tapes, I'd
6 like to ask Mr. Cole if he would be willing to stipulate
7 that a particular random day is a representative taping of
8 the programming for the period in question.

9 JUDGE SIPPEL: I'm not sure that I totally
10 understand that. Mr. Cole, do you?

11 MR. COLE: Not really, but -- and again, I don't
12 want to be -- I don't want to be obstructive in this. If
13 Mr. Hutton has a specific day in mind that we could look at,
14 and I'm not sure what he means. That would obviously help
15 me answer the question with more certainty. And also, if he
16 could explain to me what he means by "representative," I
17 think that would be -- you know, he is correct. He is
18 absolutely correct that the overall programming format of
19 the tape indicates or reveals programming which fits into a
20 repetitive, which is very repetitive in nature, and there is
21 no question about that.

22 There are differences from one day to the next and
23 from one tape to the next. And so to the extent that Mr.
24 Hutton would be seeking any kind of stipulation that the
25 tapes are all, in effect, identical in all respects, that

1 obviously would not be the case.

2 To the extent that he wants a stipulation that the
3 programming reflected on the tapes generally conforms to the
4 following format, and then a description of the format, we
5 could probably live with something along those lines, but I
6 think we would need to work out what the term
7 "representative" means and also what date he has in mind as
8 being representative.

9 MR. HUTTON: Well, I --

10 MR. COLE: I'm open - I'm open to the concept.

11 MR. HUTTON: I don't have a specific date in mind.
12 I had thought we could randomly select one. The tapes are
13 relevant for two areas.

14 One is, Mr. Gilbert testified that he thought they
15 contained public service announcements relevant to Reading
16 or the Reading area, and in reality, the tapes only contain
17 one type of public service announcement. It's a missing
18 children announcement that appeared once a day.

19 And then secondly --

20 JUDGE SIPPEL: Well, that would be able to be
21 stipulated to if that's the case, if that's an objective
22 fact. Mr. Cole? I mean, if that's the --

23 MR. COLE: Yes, but I don't think he's stated
24 factually with --

25 JUDGE SIPPEL: Well, In interrupted him.

1 MR. COLE: But yes, if that's -- if that were the
2 case, that would be subject to a factual stipulation, but I
3 don't think it's accurate.

4 JUDGE SIPPEL: All right, what was your second
5 point?

6 MR. HUTTON: Well, why don't you think it's
7 accurate?

8 MR. COLE: To the extent you just suggested there
9 is one PSA a day about missing children is wrong.

10 MR. HUTTON: Okay. It's more than once a day.
11 Is it the same one every day?

12 MR. SOUTHARD: It's the same style of PSA, missing
13 children. It appears approximately once an hour in the
14 evening hours, and a little less regularly during the
15 morning hours.

16 JUDGE SIPPEL: So the subject matter would be the
17 same. It's just that it comes up at different intervals
18 during the day?

19 MR. SOUTHARD: The subject matter of the PSA, yes.
20 These children are missing, and then there is a picture, and
21 location of where they disappeared from.

22 JUDGE SIPPEL: Well, that would be -- it sounds
23 like that would be prime for --

24 MR. COLE: Sure.

25 JUDGE SIPPEL: -- stipulation.

1 MR. COLE: Sure. Yes, as I say, and I said I was
2 open to the notion of a stipulation as long as we are
3 stipulating something that's accurate.

4 JUDGE SIPPEL: Now, was there a second category
5 too or a second item?

6 MR. SOUTHARD: I'm sorry. Your Honor, I think
7 there are something like 39 tapes, and what we are trying to
8 do here is find a way we can present that evidence without
9 having to transcribe all 39 tapes.

10 JUDGE SIPPEL: Well, let me just assure that you
11 leave here with the ease of -- you will not have to
12 transcribe 39 tapes unless you are coming -- unless you're
13 coming up with a theory that you haven't presented yet. But
14 no, you won't have to do that.

15 MR. SOUTHARD: Will we be -- if I may just -- will
16 be we be allowed to present a representative tape to be
17 viewed by the Court?

18 JUDGE SIPPEL: For what purpose?

19 MR. SOUTHARD: In one respect, as impeachment
20 evidence.

21 JUDGE SIPPEL: In what respect? Well,
22 impeachment, yes.

23 MR. SOUTHARD: Well, principally to show that
24 there is no possible way any reasonable person could have
25 viewed those tapes with any kind of care and come to the

1 conclusion that they represented WTVE's broadcast, which is
2 what Mr. Gilbert has testified he's done.

3 JUDGE SIPPEL: Well, I don't see my looking at one
4 tape or one portion of the tape is going to accomplish that,
5 but all I will see is something that's on the tape.

6 MR. SOUTHARD: And that's our purpose here of
7 trying to get some agreed as to presenting a representative
8 program.

9 JUDGE SIPPEL: Well, by way of stipulation, it
10 seems to me you've got one leg of the stipulation pretty
11 well established today, subject to the proper wording, of
12 course, that's acceptable to Mr. Cohen. But basically if
13 you come out with -- over this period of time that there was
14 consistent public service announcements that were limited
15 only to missing children, or some -- you know, that that was
16 it, there were no other subjects of public service
17 announcements, and that they appeared intervals of -- if you
18 want to take an average or if you want to do,, you know, an
19 approximately, so many in prime time, or if you want to
20 identify what prime time is, that kind of thing.

21 And then I don't know what the stipulation would
22 be to the rest of the -- there must be some way of
23 stipulating as to the broad subject of Home Shopping as
24 being everything else.

25 MR. SOUTHARD: Well, for example, a stipulation

1 that none of the tapes contain any sort of station
2 identification for WTVE at any point.

3 JUDGE SIPPEL: Well, if that's factually accurate
4 from, you know, a complete -- somebody having reviewed those
5 tapes from stem to stern, I don't see why not. That would
6 be -- that would be certainly stipulateable, subject to a
7 stipulation. Yes.

8 So what else would you be interested in?

9 MR. HUTTON: The only other area would be in the
10 types of identifications that were made such as you're
11 watching the Home Shopping Club live from Tampa, Florida,
12 those type of announcements came up regularly throughout the
13 programming. We'd like to stipulate about that as well.

14 JUDGE SIPPEL: Should be able to do that. Should
15 be able to do that. I mean, you should be able -- yes, I
16 mean, that should be able to be put -- I mean, even -- yes,
17 I mean, or you could ask for something. Well, yes, a
18 stipulation. Let me not get beyond stipulation.

19 Sure, but get it to Mr. Cole early enough, you
20 know, get all of these things sketched out over this period
21 of time and of the date from the beginning to end, and, you
22 know, give some kind of a definition to accept as probably -
23 - there must be something in that Notice of Public
24 Rulemaking or something that defines what home shopping is,
25 and that everything else on the tape met home shopping with

1 the except of these public interest stuff, which is limited
2 to such and such, and station identification, which was done
3 dah-dah-dah-dah-dah-dah, you know, that type of thing. And
4 I would think you would be able to come up with something
5 pretty clean that will answer all of these things.

6 MR. SOUTHARD: Very good, Your Honor. We will
7 work on putting something together like that.

8 JUDGE SIPPEL: All right. I think that's it then.
9 So I'm not going to hear anything more from anybody until
10 the end of this week, and certainly I will set up another --
11 it should be shorter than today's -- but a status conference
12 by the end of the month or toward the end of the month.

13 Is there any week that anybody is going to be out
14 of town or anything like that?

15 MR. SHOOK: The --

16 JUDGE SIPPEL: Mr. Shook?

17 MR. SHOOK: The week before Memorial Day weekend I
18 will be in Monday only. Tuesday through Friday I will be
19 out.

20 JUDGE SIPPEL: That's the 22nd you will be in?

21 MR. SHOOK: Yes, sir.

22 JUDGE SIPPEL: And the 23rd on you will be out.

23 Well, the 31st is a Wednesday. Why don't I set it
24 up now on the calendar for 10:00 on Wednesday. And then in
25 the meantime, as I say, if something -- I'm sure you will --

1 if something comes up, let me know.

2 So I take it you have not -- you have not acted on
3 those subpoenas, right? Those subpoenas are still in your
4 file?

5 MR. HUTTON: Yes, they are.

6 JUDGE SIPPEL: All right, now, so you know what to
7 do. I mean, you can get the one out on the custodian, you
8 can get those right out today when you go back to your
9 office.

10 MR. HUTTON: Right.

11 JUDGE SIPPEL: And start looking for ways of
12 contacting Mr. Sherwood, is that is name?

13 MR. COLE: Yes.

14 JUDGE SIPPEL: And I gave you a subpoena on him
15 too.

16 MR. HUTTON: Yes.

17 MR. SOUTHARD: Yes.

18 JUDGE SIPPEL: So if you need it-- you know, I
19 mean, if you need it for whatever purpose, by all means use
20 it. But I don't want to get -- obviously what I am trying
21 to avoid is getting into a situation where he is going to
22 have to go out and hire a lawyer or somebody to represent
23 his interest where he's moving to quash a subpoena.

24 So if there is anything more than a voluntary to
25 that subpoena, maybe you better come back to me.

1 MR. HUTTON: Okay.

2 JUDGE SIPPEL: I mean, if he wants it because he's
3 entitled to -- well, he's not going to get mileage if you do
4 it on the phone. Well, you figure it out. You figure it
5 out. My point was is I don't want any -- you know, this
6 young person being -- feeling he is being pillorated or
7 something by an unreasonable bureaucrat or something, Okay?

8 MR. HUTTON: Okay

9 JUDGE SIPPEL: Are we in synch? No four corners
10 of offense or defense for Mr. Sherwood.

11 MR. HUTTON: Okay.

12 JUDGE SIPPEL: Was it offense or defense?

13 MR. SOUTHARD: Offense.

14 MR. SOUTHARD: It's a defensive maneuver though.

15 (Laughter.)

16 MR. COLE: It's a stall. It's a stall.

17 JUDGE SIPPEL: I was able to follow that part of
18 it. It was the offense and defense that was throwing me
19 off.

20 Thank you very much.

21 (Whereupon, at 11:55 a.m., the prehearing
22 conference in the above-entitled matter was adjourned.)

23 //

24 //


25 //

REPORTER'S CERTIFICATE

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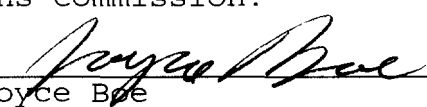
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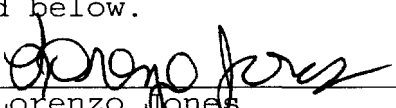
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